



# **CONTAMINATED LAND** **STRATEGY**

**2006**

**As required under Part IIA of the  
Environmental Protection Act 1990**

**December 2006**

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## **Executive Summary**

This is the first review of Ashfield District Council's (hereafter referred to as the Council) Contaminated Land Strategy 2001 (CLS 2001) which was approved by Cabinet Members in July 2001. The CLS 2001 was prepared to meet the requirements of Part IIA of the Environmental Protection Act 1990 and set out objectives, priorities and programme to address the legacy of land contamination within the District. This review provides details on progress to date in implementing the strategy and outlines its intended programme.

### **Achievements to Date**

The CLS 2001 set out proposals for a staged approach to the identification and inspection of the District for contaminated land; the stages being identification (stage 1), prioritisation (stage 2), investigation (stage 3) and remediation (stage 4). Stages 1 and 2 have been completed utilising the following methods:

Stage 1 – Identification – The Council's chosen Geographical Information System (GIS), MapInfo, was developed to incorporate historical maps, geological data and other relevant environmental information. Detailed interrogation of the GIS permitted identification of areas of potential contamination based on past and current land uses. Circa 1500 areas of potentially contaminated land were identified.

Stage 2 – Prioritisation – Guidance dictates that any prioritisation method must be robust, reliable, consistent, transparent and repeatable. Extensive research identified and evaluated a number of prioritisation methodologies, following which an in-house paper-based prioritisation model was developed. The model was evaluated via a pilot study and considered to fulfill the aforementioned criteria.

Concurrent with model development, an Excel spreadsheet was created to record all prioritisation details and permit data manipulation, retrieval and update.

All identified areas of potentially contaminated land were prioritised, assigning a total score to each site. Those sites with the highest scores are considered to have the most serious, pressing problems and hence are categorised as being of high concern.

### **Programme Development**

Having completed the identification and prioritisation of potentially contaminated land within the District, the Council aims to progress the investigation (stage 3) and where necessary, the remediation (stage 4) of sites.

Progress will be made either under the planning regime, where planning

applications are spatially co-incident with prioritised sites or, where resources permit, under the Part IIA regime.

For planning related cases, consents will continue to be conditioned obligating developers to investigate sites and where necessary remediate to ensure the land is suitable for use and that no new Part IIA land is created.

Under the Part IIA regime, the highest priority sites will be investigated first in accordance with Statutory Guidance. Where sites are designated as contaminated in accordance with well defined criteria, the Council will require appropriate remediation such that the land is made suitable for its present use. By adopting the 'polluter pays' principle, remediation costs will normally fall to the person who "caused or knowingly permitted" the contamination.

Should the original polluter no longer exist or is untraceable, remediation costs fall to the current site owner or occupier.

Land under current ownership of the Council or land which has been polluted by the Council or its predecessors will be dealt with in its prioritised order.

## **1. INTRODUCTION.**

The UK has a legacy of land contamination arising from past industrial development. The Environment Agency has estimated that there may be some 300,000 hectares of land in the U.K, affected to some degree by industrial activities or through the presence of naturally occurring materials, such as mineralised rocks and soils, in certain localities. Various industrial practices may have led to substances being in, on or under land with the potential to cause harm to human health and/or the environment e.g. heavy metals and organic compounds. The Department of Environment (DOE), under its contaminated land research programme, commissioned the research and the publication of Industry Profiles which detail information on the industries which have the potential to cause contamination. The extensive list of DOE Industry Profiles has been included in Appendix 11. Other uncontrolled and unregulated activities which may have occurred and caused potential contamination may include landfilling of waste which may give rise to landfill gas and leachate generation with the potential to contaminate.

The previous system for dealing with contaminated land, which had not been established on the basis of Public Bodies acting under a specific Statutory Code led in some instances to over prescriptive remediation being undertaken to ensure public safety and as a result the Government emphasised the need for a new system of regulation.

In response to this, the UK Government through the establishment of various policies and the introduction of legislation has provided a framework that prevents future contamination from occurring and ensures that appropriate

action is taken to deal with existing land contamination where it poses unacceptable risks to human health or to the environment.

The Government regards the implementation of the new regime as an essential tool in providing an effective framework to deal with the regulation of contaminated land. It is based upon a set of principles which include *suitable for use* standards of remediation, the *polluter pays principle* and allocating liability, following a *risk based* approach to the assessment of contamination and *sustainable development*.

The Government's stated objectives, set out in paragraph 7 of the DETR Circular 02/2000 are threefold:

- to identify and remove unacceptable risks to human health and the environment;
- to seek to bring damaged land back into beneficial use; and
- to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.

## **1.1 General Policy of the Council**

### **1.1.1 Sustainable Development (Local Agenda 21).**

These three objectives underlie the suitable for use approach to the remediation of contaminated land, which the Government considers is the most appropriate approach to achieving sustainable development in this area. The suitable for use approach requires remedial action only where the contamination poses unacceptable actual or potential risks to health or the environment, and where there are appropriate and cost effective means to do so, taking into account the actual or intended use of the site.

Sustainable Development as far as the UK is concerned means reconciling the joint aims of safeguarding the standard of living and quality of life with the need to safeguard natural resources and protect and enhance the environment. The development of land therefore is at the heart of a sustainable way of life. The supply of land, like many other natural resources, is limited and the demand for new development whether it be for housing, business, transport or leisure activities places severe pressure on our environment. Redeveloping areas where the previous use has come to an end not only contributes to the social and economic regeneration of local communities but is also an important force in achieving environmental improvement. "*Planning for Communities of the Future*", which is a government white paper published in 1998 outlines various initiatives, which aim to achieve the objective of increasing the recycling of land or brownfield sites and additionally national planning policy guidelines currently exist which reiterates the above. Brownfield land may have become contaminated by its former uses therefore it is probable that a proportion of such sites may be affected by land contamination. However further assessment would be necessary in order to determine whether the land is actually contaminated

land within the legal definition.

### **1.1.2 Local Objectives**

Under the new contaminated land regime each local authority has to:

(a) *“cause its area to be inspected from time to time for the purpose of identifying contaminated land and*

(b) *decide whether any such land is required to be designated a special site”*

(Section 78B(1) under Part IIA of the Environmental Protection Act 1990). Where contaminated land is identified, the local authority must ensure that it is managed in an appropriate manner. Statutory Guidance has been issued to local authorities, which requires a strategic approach to inspection of their area and the formal adoption of a written inspection strategy by June 2001. The contaminated land strategy outlines how the Council plans to approach the issue of contaminated land and implement its inspection duties under Part IIA of the Environmental Protection Act 1990.

Historically Ashfield like many other areas of the UK has been associated with various types of industrial activity having the potential to cause land contamination and for this reason the Council has a need to focus on the identification and remediation of contaminated land within the district. The contaminated land inspection strategy has important links to several other key corporate, regional and county strategies. It is intended that the CLS 2006 will make a significant contribution to the Council's sustainable development approach and the work relating to Local Agenda 21. Information relating to sustainable development within Ashfield is contained in a number of strategies, plans and guides.

### **1.1.3 Alignment of the Contaminated Land Strategy 2006 with the Community Strategy for Ashfield, the Ashfield District Council Corporate Plan and the Sustainable Developer Guide for Nottinghamshire**

The aims and objectives of the strategy are very closely aligned to those of Corporately adopted strategies, plans and guides.

Through the investigation and where necessary remediation of brownfield sites, the CLS helps contribute towards the key environmental priority to:

“protect and enhance the local biodiversity and discourage use of green space for development”

outlined within the Council's Corporate Plan and stated as a ‘priority for action’ within the Community Strategy for Ashfield. The use of previously developed land and buildings as a priority is advocated as a sustainable solution within the Sustainable Developer Guide for Nottinghamshire.

Where the need for remediation is identified, the CLS 2006 seeks to minimise waste generation through adoption of in-situ environmentally benign remedial techniques, and where unavoidable, ensure waste materials are disposed of

in a sustainable manner. Such practices are in line with environmental and health and pollution priorities detailed in the Community Strategy and Sustainable Developer Guide.

The promotion of healthier living, cited as a Personal Aim under the Council's Strategic Aims and as a priority for action within the Community Strategy, is addressed within the CLS 2006 through investigation and remediation of past pollution to create safe, clean and pleasant environments for homes, work and play.

Development of the local economy via creation of new industrial and commercial activity is considered a strategic economic aim under the Corporate Plan. Under the Development Control and Part IIA regimes, the strategy enables brownfield sites to be made suitable for use, releasing valuable land space for such activities and thereby contributing to regeneration.

#### **1.1.4 Enforcement**

Much land contamination has been present for long periods of time; however not all contamination poses problems such that it will fall within the statutory definition under Part IIA of the Environmental Protection Act 1990. Such problems may only be of concern when or if the land is used for a particular purpose. Therefore, it may only be necessary to deal with contamination when land is proposed for development through a planning application, e.g. the development of a former industrial site for housing, i.e. when risks from contaminative substances may be realised through the introduction of a "sensitive" new end use e.g. dwellings with gardens. However, in certain circumstances regulatory action may be needed to make sure that necessary remediation of a site is carried out.

The "suitable for use" approach will ensure that remediation requirements are reasonable and tailored to the needs of individual sites.

The Council has a duty to act in accordance with the Legislation, and any Statutory Regulations and Guidance made under it. Depending on the particular circumstances, the Council may use a variety of means to ensure that employers, employees, self-employed, landlords and individuals meet their responsibilities, including education, advice, guidance, warning letters, statutory notices &/or prosecutions.

The Council will generally reserve prosecution (and therefore criminal proceedings) for the more serious offences, which either result or could have resulted in serious injury or ill health, or which represented a blatant disregard by employers, employees or others of their responsibilities under the legislation. In keeping with its preventative role, the Council may use prosecution in a way to draw attention to the need for compliance and the maintenance of good standards.

### 1.1.5 General Land Contamination

Contaminated land is an archetypal example of past failures to move towards sustainable development. Thus the first priority for the Government's policy on land contamination is the prevention of the creation of new contamination. A range of legislative regimes will also interact with the new Part IIA regime, ensuring that the problem of land contamination is addressed through the most effective regulatory system given the specific circumstances. An example is the Integrated Pollution Prevention and Control Regulations 1999, (IPPC), which superseded Integrated Pollution Control, under Part 1 of the Environmental Protection Act 1990, (IPC). The IPPC controls will regulate certain installations, categorised as A1 and A2, ensuring that for any new installations a site condition survey is carried out which may serve to highlight potential contamination issues, but will also set a benchmark against which the site will be restored when the activity ceases. IPPC requires that the process operator returns the land back to its previous condition, and hence should prevent any new Part IIA land.

Whether or not land is considered as contaminated land will be determined in accordance with the Statutory Definition. The Statutory Guidance, issued by the Secretary of State, states that the identification of contaminated land is to be carried out on the basis of risk assessment methodologies using the "**contaminant-pathway-receptor**" approach. Before a local authority determines that any land appears to be contaminated it should be satisfied that a contaminant source, pathway and a receptor have been identified. Without the identification of all three elements of a pollutant linkage land should not be identified as contaminated.

Most of the land previously estimated by the Environment Agency may not pose an immediate threat to human health or the environment. Indeed international experience suggests that only a small proportion of potentially contaminated sites will actually pose such a threat. However the problems of land contamination are seen to be far reaching as stated in Paragraph 6.0 of the DETR Circular 02/2000 as the existence of contamination presents its own threats to sustainable development:

- it impedes social progress, depriving local people of a clean and healthy environment.
- it threatens wider damage to the environment and to wildlife.
- it inhibits the prudent use of land and soil resources, particularly by obstructing the recycling of previously developed land and increasing development pressures on greenfield areas. and
- the cost of remediation represents a high burden on individual companies, home and other landowners, and the economy as a whole.

The "suitable for use" approach focuses on the risks caused by land contamination. This approach recognises that the risks presented by any given level of contamination will vary greatly according to the use of the land and a wide range of other factors, e.g. the underlying geology of the site.

Risks therefore need to be assessed on a site-specific basis.

The “suitable for use” approach consists of three elements:

- **ensuring that land is suitable for its current use**  
This involves identifying any land where contamination is causing unacceptable risks to human health and the environment, assessed on the basis of the current use and circumstances of the land and returning such land to a condition where such risks no longer arise (remediation); the new contaminated land regime provides general machinery to achieve this.
- **ensuring that land is made suitable for any new use, as planning permission is given for that new use**  
This involves assessing the potential risks from contamination on the basis of the proposed future use and circumstances before development permission is given. Where necessary avoiding unacceptable risks to human health and the environment and remediating the land before the new uses commence. This is the role of the town and country planning and building control regimes.
- **limiting requirements for remediation of land to that work necessary to prevent unacceptable risks to human health or the environment in relation to the current or future use of the land for which planning permission is being sought;**  
This involves recognising that the risks from contaminated land can be satisfactorily assessed only in the context of specific uses of the land (whether current or proposed) and that any attempt to guess what might be needed some time in the future for other uses is likely to result either in unnecessary work which wastes resources or hasty work which distorts social, economic and environmental priorities.

For the purpose of this legislation “current use” means any use which is currently being made or is likely to be made of the land and which is consistent with any existing planning permission (or which is lawful under the Town and Country Planning legislation) with the following provisions:

- the current use should be taken to include any temporary use to which the land is or is likely to be put to from time to time and which is permitted under the Town and Country Planning legislation:
- the current use includes future uses or developments, which do not require a new(or amended) grant of planning permission:
- the current use should be taken to include any likely recreational use of the land, whether authorised by the owner/occupier or not e.g. children playing on the land. However, the local authority should give due attention to measures taken to prevent or restrict access to the land:
- in the case of agricultural land the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land.

The main driver of current government policy is to seek to bring damaged land

back into beneficial use, such as housing, public open space, new industry or agriculture. The reclamation of such land is justified by the need to conserve greenfield land, to protect the countryside and to encourage the regeneration of declining industrial areas and inner cities. The regeneration of inner cities is currently receiving much attention but the problem is not solely confined to urban areas, e.g. former land-based disposal sites are now being redeveloped, many of which are in rural or semi-rural locations.

#### **1.1.6 Public Access to Information.**

The release of prescribed information regarding land contamination must be handled in a controlled manner so as to avoid the potential for public alarm.

The Council is committed to openness in relation to information, provided the information is being provided to an appropriate person for a proper purpose.

#### **1.1.7 Response to enquiries, planning consultations and other requests for other information**

Under the Environmental Information Regulations 1992, the Council has a duty to respond to specific requests for information held by the authority regarding any environmental information subject to the requirements and exemptions within the above legislation. Public access to prescribed information under the Part IIA regime will be available for inspection through the provision of a public register, which is required under the legislation.

The 2002 Edition of the standard Land Search inquiries form CON29, Part 1, Enquiries of Local Authorities includes a four-part question (question 3.12) regarding contaminated land. Two questions relate to the position where the land being searched may be identified as contaminated land and two questions relate to the position where the land being searched may be identified as being at risk of harm from other land. In response to this question, information will be recorded based upon the information sources available to the authority at the time of the enquiry.

#### **1.1.8 Consultation and Involvement of Community Groups and Businesses.**

The Part IIA regime, which places a duty on the Council to undertake inspection of the district in compliance with the legislation, will have a potential affect on a wide spectrum of parties. The statutory and other consultees, which form part of this process, are detailed within this strategy.

### **1.2 Regulatory Context.**

#### **1.2.1 Background to the Legislation.**

Part IIA of the Environmental Protection Act 1990 formulates a regime for dealing with the problems arising from contaminated land, it was brought into

force in England on April 1, 2000. It imposes duties on the Local Authority to inspect their areas so as to identify contaminated land, and creates a complex scheme of strict and retrospective liability for the remediation of land identified as contaminated.

Prior to the implementation of the regime, there had been no specific U.K . Legislation to address contaminated land issues. However the existence of certain statutes and policies in related areas have had a substantial impact on how the problems were dealt with in the past. Statutes, which have related to contaminated land, include: -

Control of Pollution Act 1974, parts 1 and 2

Town and Country Planning Act 1990

Derelict Land Act 1982

Building Regulations 1991 (S.I.1991/2768)

Public Health Act 1936

Environmental Protection Act 1990

Environmental Protection (Prescribed Processes and Substances) Regulations 1991(S.I. 1991/ 472); Schedule 6 deals with the release of substances onto land.

Under the Town and Country Planning Act 1990, the Council can control the development of land, which might be contaminated. Contamination issues have been a material consideration of planning legislation since 1974.

Advice and guidance to Local Authorities and developers on the identification, assessment and the development of contaminated sites is offered in the DOE Circular 21/87 entitled Development of Contaminated Land. Planning Policy Guidance (PPG) notes (published by DETR) and more recently Planning Policy Statements (PPS), published by DEFRA, provide specific guidance on particular matters. PPG 1 emphasises that urban regeneration and the re-use of previously developed land, also known as “ brownfield sites” will create a more sustainable pattern of development.

The principals of the re-use of brownfield sites include those affected by contamination, as advised in PPS 23. Contamination should be taken into account therefore when determining planning applications.

Local Authorities may also control the development of potentially contaminated sites using the Building Regulations, which regards land contamination as a relevant issue in the control of building construction. The Regulations specifically address the need to properly consider potential hazards caused by substances on or in the ground.

Statutory nuisance provisions relating to land originally within part III of the Public Health Act 1936 and re-enacted in the Environmental Protection Act 1990, Part I have been replaced by Part 11A.

### **1.2.2 Other Significant Contaminated Land Related Issues – Development of the Contaminated Land Regime**

#### Government Guidance

The Government has sponsored research aimed at developing more cost-effective methods of restoring contaminated land. In 1976 the Interdepartmental Committee on the Redevelopment of Contaminated Land. (ICRCL) published guidance on the assessment and redevelopment of contaminated land.

#### Environmental Protection Act 1990

At the end of the 1980s, concern was focused on contaminated land in two reports of the House of Commons Select Committee on the Environment dealing with toxic waste and contaminated land. In the second of these reports, the select committee recognised the difficult policy issues but suggested that action was needed. The response at that time was to introduce a provision (section 143 of the Environmental Protection Act 1990) requiring that Local Authorities compile Public Registers of land, which had been subject to a contaminative use. The provisions were not enacted and the Government subsequently announced the repeal of s.143, due to concerns, of potential serious blight.

A number of consultation papers were written and debated, culminating in the publication of the white paper Framework for Contaminated Land and the subsequent passage of the Environment Act 1995, s57, which introduced into the 1990 Act a new Part IIA dealing with contaminated land.

### **1.2.3 Role of the Local Authority**

The Regulation of the Part IIA regime is to be carried out by Local Authorities, The Environment Agency and The Scottish Environment Agency in Scotland, acting under a Statutory Code. The Regime is based on the following basic principles:

- identify the problem
- assess the risks
- determine the appropriate remediation requirements
- consider the costs
- establish who should pay
- implement and remediate

Under the provisions, each local authority must “cause its area to be inspected from time to time for the purpose of identifying contaminated land” (Section 78B(1)). In doing so it has to act in accordance with statutory guidance issued by the Secretary of State; Chapter B of Annex 3, DETR Circular 02/2000, Environmental Protection Act 1990: Part IIA *Contaminated Land*. Where contaminated land is identified, the local authority must manage the land in a suitable and strategic way by applying a risk based approach. In addition each local authority was required to produce a written strategy

document which details how the authority plans to implement its inspection duties under the Act. The CLS 2001 document was formally adopted and published in July 2001.

In implementing the regime, the Council (the enforcing authority) has four main tasks:

- to establish who should bear responsibility for the remediation of the land (**the ‘appropriate person’ or persons**);
- to decide, after consultation, what remediation is required in any individual case and to ensure that such remediation takes place, either through agreement with the appropriate person, or by serving a remediation notice on the appropriate person if agreement is not possible or, in certain circumstances, through carrying out the work themselves;
- where a remediation notice is served, or the authority itself carries out the work, to determine who should bear what proportion of the liability for meeting the costs of the work; and
- to record certain prescribed information about their regulatory actions on a public register.

The statutory guidance specifies the Council’s duty with regard to inspection of their area and also lays down fundamental principles to be followed throughout the inspection and strategy process, Chapter B, Part 3.

“In carrying out its inspection duty under section 78B(1), the local authority should take a strategic approach to the identification of land which merits detailed individual inspection”. Paragraph B9 states that the approach should:

- a) be rational, ordered and efficient
- b) be proportionate to the seriousness of any actual or potential risk
- c) seek to ensure that the most pressing and serious problems are located first
- d) ensure that resources are concentrated on investigation in areas where the authority is most likely to identify contaminated land; and
- e) ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.”

The legal requirement to produce an inspection strategy for contaminated land allows local authorities to consider how best to prepare and implement their inspection duties by stimulating the development and utilisation of a co-ordinated approach between key personnel within individual departments in the authority and working arrangements with external agencies.

#### **1.2.4 Regulatory Role of Environment Agency**

The regime requires that Local Authorities and the Environment Agency work together and share the regulatory duties under this regime. Although Local Authorities have the sole responsibility for the identification of land that meets

the statutory definition, the Environment Agency has a duty to provide information and advice, in addition to carrying out inspections at potential 'special sites' (Appendix 6 Glossary of Terms defines 'special sites') on behalf of the Local Authority.

The principal roles of the Environment Agency with respect to contaminated land can be summarised as follows: -

- the regulation of 'special sites' under Part IIA, including the production and maintenance of a public register of Special Sites remediation.
- the inspection of land that if found to be contaminated, would be a special site under The Contaminated Land Regulations (England) 2000, at the request of and on behalf of Local Authorities.
- the provision of information to Local Authorities on land contamination.
- the provision of advice to Local Authorities on identifying and dealing with the pollution of controlled waters. Where the Environment Agency considers it appropriate, it shall provide site-specific advice on the remediation of sites which have not been identified as special sites.
- preparation of a national report on the state of the environment and contaminated land in England and Wales.

### **1.2.5 Definitions of Contaminated Land**

The definition of contaminated land is given in section 78A(2) of Part IIA and is as follows:

"any land which appears to the local authority in whose area it is situated to be in such a condition by reason of substances in, on or under the land, that –

- a) significant harm is being caused or there is a significant possibility of such harm being caused; or
- b) pollution of controlled waters is being, or is likely to be caused."

The definition aims to enable the identification and remediation of land on which contamination is causing unacceptable risks to human health or the wider environment. Consequently, the definition does not include all land where contamination may be present.

#### Principles of Pollutant Linkage.

For contaminated land to be so designated, there must exist a 'significant pollutant linkage' consisting of:

- a 'contaminant' situated in, on or under the land with the potential to cause harm or to cause pollution of controlled waters
- a 'pathway' - one or more routes or means by, or through which a receptor is being exposed to or affected by a contaminant, or could be so exposed or affected.
- a 'receptor' (target) - either a living organism, a group of organisms, an

ecological system or a piece of property which is being or is capable of being harmed by a contaminant, or controlled waters which are being, or could be, polluted by a contaminant.

Consequently, a local authority cannot designate land as 'contaminated' unless this 'significant pollutant linkage' exists regardless of the quantity and toxicity of contaminants on, in or under the land.

Secondly, once a contaminant, pathway and receptor have been identified, the local authority must satisfy itself that both;

- a) such a pollutant linkage exists in respect of a piece of land; and
- b) that pollutant linkage is resulting in significant harm.

### Significant Harm

Section 78A(4) defines "harm" as harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

The local authority should regard as "significant", only harm which is both a type of receptor listed in Table A of the statutory guidance (Appendix 13), and within the description of harm specified for that type of receptor in the table. The local authority should not regard harm to any other type of receptors than those listed as being significant harm.

In deciding whether the possibility of significant harm being caused is significant, the following factors should be taken into account: -

- a) the nature and degree of harm;
- b) the susceptibility of the receptors to which the harm might be caused; and
- c) the timescales within which the harm might occur.

### Principles of Risk Assessment.

The statutory guidance promotes a risk-based approach to dealing with potentially contaminated land in the UK. The aim of this type of approach is to protect human health and the environment without unnecessarily wasting finances on the clean up of contamination.

The need for and extent of any remediation is determined from an assessment of the risks posed to human health and the environment, whilst taking into account the intended use of the site.

### **1.2.6 Situations in which the regime does not apply and interaction with other Regimes.**

#### New development

The planning authority has to consider the implications of contamination both when it is developing structure and local plans and when it is considering individual applications for planning permission. The planning authority should satisfy itself that the potential for contamination is properly assessed, and the development incorporates any necessary remediation. Where necessary, any planning permission should include appropriate site investigation and remediation conditions.

In any case where new development is taking place, it will be the responsibility of the developer to carry out the necessary remediation. In most cases, the enforcement of any remediation requirements will be through planning conditions and building control, rather than through a remediation notice issued under Part IIA.

#### Waste disposal sites

There may be significant harm or pollution of controlled waters arising from land for which a site license is in force under Part II. Where this is the case, under section 78YB(2), the Part IIA regime does not normally apply; that is the land cannot formally be identified as “contaminated land” and no remediation notice can be served. If action were needed to deal with a pollution problem in such a case, this would normally be enforced through a “condition” attached to the license. However, Part IIA does apply if the harm or pollution on a licensed site is attributable to a cause other than a breach of the site license, or the carrying on of a activity authorised by the license in accordance with its terms and conditions.

#### Controlled waters

Under the Water Resources Act 1991, the Environment Agency has powers to take action to prevent or remedy the pollution of controlled waters. The Environment Agency has published a policy statement which sets out how the Agency intends to use these powers, particularly in cases where there is an overlap with the Part IIA regime.

#### Organisms

Land must be contaminated by a substance to meet the statutory definition - the contaminated land regime does not apply to land, which is contaminated by organisms.

#### Significant harm to employees

Harm to the public and employees could arise as a result of land

contamination. The Health and Safety at Work etc Act 1974 and their associated controls are concerned with risks to the public or employees at business and other premises, therefore in these cases, the primary legislation is applied i.e. Health and Safety at Work etc. Act 1974.

#### Contamination as a result of an accident at a COMAH site

The Control of Major Accident Hazards Regulations 1999 (COMAH) require operators of establishments handling prescribed dangerous substances to prepare on-site emergency plans, and the local authorities to prepare off-site emergency plans. The objectives of these emergency plans include providing for the restoration and clean up of the environment following a major accident.

### **1.3 Objectives of Strategy Document**

- To meet the requirement within DETR Circular 01/2006, Environmental Protection Act 1990: Part IIA *Contaminated Land*, Annex 3, paragraph B.12, to produce, formally adopt and publish a written strategy.
- To follow the advice on good practice within the DETR Inspection Strategy for Contaminated Land, Technical Advice For Local Authorities, 04/2000.
- To follow the approach within DETR Circular 01/2006, Environmental Protection Act 1990: Part IIA *Contaminated Land*, Annex 3, paragraph B.9.
- To ensure that where redevelopment of land takes place within the District that the planning process deals effectively with any land contamination such that the land is suitable for its intended use.
- To ensure that the Strategy is compatible with the Council's Community Strategy for Ashfield, Corporate Plan and Sustainability and Development Objectives.
- To make information freely available to all relevant Sections of the Council to enable potential liability issues associated with Council owned land to be fully assessed.
- To make information freely available to all relevant Sections of the Council to enable consideration to be given about land contamination in policy making processes.
- To ensure that the Council is aware of any associated potential land contamination liabilities, prior to proposed acquisition or disposal.
- To avoid unnecessary blight of any land within the District.
- To provide information to the Environment Agency for its report on

## Contaminated Land.

### **1.4 Development of the Contaminated Land Strategy 2001**

#### **1.4.1 Overall Approach**

The approach that the Council followed in preparing its Strategy for Contaminated Land was to closely follow Part C of the DETR Draft Guidance - *Suggested Outline for a Typical Local Authority Strategy*. In addition to this the authority made reference to books and various other publications on the new contaminated land regime. Officers involved in producing the initial draft of the Strategy attended several training seminars organised by the Environment Agency leading up to the implementation of Part IIA. Due regard was given to the approach to be taken by the other Nottinghamshire Authorities in producing their Strategies in an endeavor to achieve a degree of consistency. Information was freely exchanged amongst officers attending the Nottinghamshire Contaminated Land Working Group which held meetings every one to two months following the implementation of Part IIA. These meetings also provided the opportunity to discuss issues that could benefit from a joint approach by either eliminating the duplication of work or achieving a more consistent and cost effective result.

#### **1.4.2 Internal team responsible**

The two members of the Contaminated Land Team in the Council's Environmental Protection Section carried out the preparation of the Contaminated Land Strategy. The relevant staff consisted of an Environmental Health Officer who had overall responsibility for the production of the Strategy, and an Environmental Protection Technician to provide the necessary assistance and technical support. The responsibility of presenting the completed Strategy to the Council's Cabinet for adoption lay with the Head of Health and Housing Division.

#### **1.4.3 Internal liaison**

Liaison within the Council was carried out utilising various methods depending on what needed to be achieved, how many people/sections were involved and what level of officer(s) were being approached. This ranged from informal conversations, through to e-mails/written memorandums to pre arranged meetings with formal agendas. Much of the initial exchange of information involved the former, however as the document progressed more formal methods were employed. Finally, the use of written documents prevailed as Section Heads were informed of and asked to approve certain future commitments. The Strategy was presented to Head of Service Management Team and the Council Cabinet approved the completed Strategy.

#### **1.4.4 Consultation with external organisations detailed in paragraph B.11 of the statutory guidance**

Formal consultation with the following bodies took place during the compilation of the Draft Strategy (CLS 2001) and during the formal consultation phase.

**The Environment Agency  
Nottinghamshire County Council  
English Nature  
English Heritage  
Ministry of Agriculture Fisheries and Food**

Comments on the Draft Strategy (CLS 2001) were invited from the above organisations. Those received within the specified time period were fully considered for inclusion in the published document. Where any doubt prevailed regarding a comment, then a meeting between officers of the relevant body and appropriate officers of the Council took place to agree the wording of any additional inclusion. Copies of the published strategy were forwarded to the consultees detailed above, with extra copies available on request.

Details of statutory consultees are contained in Appendix 7.

#### **1.4.5 Consultation with other organisations**

Copies of the Draft Strategy (CLS 2001) were made available for inspection to the following and any other interested parties

**Parish Councils  
Ashfield Partnership-Issue Groups  
Area Health Authority  
Local Libraries  
ADC Information Desks  
Local Developers  
NHBC  
Members Surgeries  
All Local Authorities adjacent to ADC.  
Food Standards Agency**

Comments on the Draft Strategy may have been made by any of the above within the specified time period for consideration. Any beneficial comments received were included in the published Strategy.

Copies of the published strategy were available in different formats to any interested parties at an appropriate charge.

## **1.5 Development of the CLS 2006**

### **1.5.1 Overall Approach**

A review of the CLS 2001 determined that Sections 1, 2, 5, 6, 8 and 9 required only minor amendments and updates. Sections 3 (Overall Aims), 4 (Priority Actions and Timescales) and 7 (Programme for Inspection) have been re-written to report progress to date and reflect revised priorities and programmes.

Consideration was given to the publication only of those sections having undergone a major re-write, which would then have to be read in conjunction with the CLS 2001. However, in light of the minor amendments and updates to aforementioned Sections, the disadvantages of referring to two documents and the addition of a Section incorporating Radioactively Contaminated Land, it was decided that the CLS 2006 should be published as a single, complete revised document.

## **2. CHARACTERISTICS OF THE COUNCIL'S AREA**

### **2.1 Geographical location**

The District of Ashfield is situated on the west side of Nottinghamshire. Other local authorities that border up to Ashfield are Mansfield, Newark & Sherwood, Gedling, Nottingham City and Broxtowe all in the county of Nottinghamshire and Amber Valley and Bolsover both in the county of Derbyshire, (see plan 1).

### **2.2 Brief description/history**

The majority of the District has a gentle undulating landscape. The highest point is approximately 205 metres above sea level and is located in the northwest. The lowest point is approximately 50 metres above sea level and is located in the southeast. Surface drainage flows via streams and ditches to one of four small rivers that convey surface water out of the District. The River Meden drains the north of the District and flows in a northeasterly direction. The River Maun drains the northeast of the District and flows in a northeast direction to join the Meden outside the District. The River Leen drains the south and east of the District and flows in a southerly direction. The River Erewash drains the centre and west of the District and flows in a southerly direction, (see plan 2).

Historically the District formed part of the much larger Sherwood Forest until the 17<sup>th</sup> century when substantial felling commenced. This released large areas for agricultural land and mixed farming is still important in the District today. Ashfield District Council was formed in 1974 and has its central offices in Kirkby. The District comprises the whole of the former Sutton in Ashfield

Urban District Council, Kirkby in Ashfield Urban District Council and Hucknall Urban District Council and part of former Basford Rural District Council.

### **2.3 Size (hectares)**

The District of Ashfield occupies an area of 10956 hectares. On the Ordnance Survey National Grid, the District has a northern limit of 364 km north and a southern limit of 346 km north. The eastern limit of the District is 456 km east whilst the western limit is 444 km east.

### **2.4 Population distribution (geographical)**

The population of Ashfield is currently 112,220 (based on 2002 data), the majority of the people living in the three main towns in Ashfield. Sutton in Ashfield (including Huthwaite, Stanton Hill and Skegby) towards the north of the District has a population of 43,706 (38.9% of District total), Kirkby in Ashfield in the centre of the District has a population of 26,314 (23.5%) and Hucknall in the south of the District has a population of 29,667 (26.4%). Three smaller villages account for nearly all of the remaining population in the District. These villages are Selston towards the west of the District which has a population of 6,358 (5.7%), Underwood towards the west of the District which has a population of 2,926 (2.6%) and Jacksdale in the west of the District which has a population of 3,249 (2.9%).

### **2.5 Details of Authority ownership of land**

Refer to Appendix 5

### **2.6 Current land use characteristics**

The three main urban areas in the District namely Sutton in Ashfield, Kirkby in Ashfield and Hucknall are where housing, employment and services are generally concentrated. Three settlements namely Selston, Underwood and Jacksdale also contain significant residential areas but lack the employment opportunities and services found in the main urban areas. The main exception to the above is Sherwood Business Park situated on a former "Greenfield site" northeast of the M1 motorway junction 27 which was declared an Enterprise Zone by the Government in August 1995.

The remaining land in the District is mainly farmland or woodland, including managed forestry. Other current land uses include parks and golf courses, schools and sportsgrounds, a licensed and operational landfill, former colliery tips, closed colliery sites, sewage works, electricity installations, boating lakes, railway land, roads and a motorway.

### **2.7 Protected locations (natural habitats etc).**

Existing Sites of Special Scientific Interest (SSSI's) i.e. those sites with specific statutory protection are listed, see Appendix 1, Local Nature Reserves have also been included in Appendix 1, the LNR's are each

contained within or about SSSI's.

A list of local biologically and geologically protected sites, i.e. (sites of importance for nature conservation and geological significance (SINC)) and ancient woodland sites (identified by English Nature) are included, see Appendix 2.

[SINC's will be subject to regular review and updating to take account of new developments and to identify new sites. Refer to ADC Local Plan Review Policy EV6](#)

## **2.8 Key property types, e.g. ancient monuments.**

Buildings of Special Architectural or Historic Interest are listed, see Appendix 3, Scheduled Ancient Monuments have also been included in Appendix 3.

## **2.9 Key water resource/protection issues**

Refer to Appendix 4. Plan 3 showing Ashfield District and the protection of groundwater has been derived from, National Rivers Authority (NRA) Groundwater Vulnerability of Nottinghamshire, Sheet 18. See also Key to Plan 3.

## **2.10 Known information on contamination**

Numerous site-specific files in paper format are in possession of the Environmental Protection and the Development Control Services of the Council. These consist mainly of reports detailing results from testing carried out on "Brownfield sites" prior to redevelopment. The Community and Economic Promotion section of the Council has completion reports relating to remediation carried out at derelict sites within the District. Records prior to 1974 are sparse, some exist in The County Archive at Nottingham. Personal knowledge of local sites is another source of information, especially from officers who have lived in the District or worked for the Council for many years.

## **2.11 Current and past industrial history**

The extraction of minerals has formed a major part of the District's industrial development, coal mining being the most significant. In the western part of the District, ancient coal and ironstone workings exist and shafts are abundant. Large iron and steel works existed at Ironville, immediately to the west of the District and at Bestwood, immediately to the southeast of the District. Extensive coal workings exist throughout the District and become deeper as they progress to the east. In the eastern part of the District the Permo-Triassic Strata conceal the coalfield. In this part of the District, shafts are much less numerous. The last remaining colliery in the District namely Annesley Bentinck closed in January 2000. Since World War II, coal has also been worked by opencast methods in the western part of the District.

Quarrying of the Permo-Triassic Strata has taken place historically at many locations throughout the eastern part of the District. These consisted of: -

- Limestone quarries (Lower Magnesian Limestone) and associated limekilns
- Clay pits (Lower and Middle Permian Marl) and associated brickworks/kilns
- Sand and Sandstone quarries (Lower Mottled Sandstone).

Many of these quarries have subsequently been filled and restored, some have since been built over.

Historically, textile and hosiery manufacturing has thrived in the District. During the 1960's approximately 40 textile factories and associated dye works producing hosiery and allied products were in existence. Considerable downsizing/closure has taken place in this industry with corresponding release of land for alternative employment use or in many cases for residential development.

## **2.12 Broad geological/hydrogeological characteristics**

The whole of the District of Ashfield lies on part of the Nottinghamshire, Derbyshire and Yorkshire coalfield. In the western (approx. 40%) part of the District, the coalfield is exposed at the surface. Here, coal seams mainly from the Middle Coal Measures outcrop at the surface. In the eastern (approx. 60%) part of the District, the Permo-Triassic Strata that lie unconformably on top of the coal measures conceal the coalfield. The Permo-Triassic Strata consist of Lower Permian Marl, Lower Magnesian Limestone, Middle Permian Marl, Lower Mottled Sandstone and (in the northeast of the District) Bunter Pebble Beds. Generally, the Coal Measures strata dip gently to the east throughout the District.

## **2.13 Hydrogeology**

The National Rivers Authority plan *Groundwater Vulnerability of Nottinghamshire* sheet 18 includes the whole of the District at a scale of 1:100,000. Although drawn to this small scale, it can still be seen that the groundwater vulnerability classification closely follows the geology described above. The exposed part of the coalfield is classed as a Minor Aquifer being variably permeable and would thus be classified as being of *low groundwater vulnerability*. The Permo-Triassic rocks are classed as Major Aquifers being highly permeable; these would be classified as being of *high groundwater vulnerability*. With the exception of the Permian Marls which are classed as Non Aquifers and being negligibly permeable, again these would be classified as being of *low groundwater vulnerability*.

## **2.14 Minewaters**

It should also be appreciated that the extensive, often interconnected coal

mine workings that exist beneath the whole of the District can provide a pathway for water to migrate. Historically this water would reach the workings of an operational colliery where it could be pumped to the surface and discharged under controlled conditions. There are no operational collieries remaining in the District and although pumping of minewater to the surface continues at sites outside the District, it is anticipated that mineworkings beneath the District will now flood. Any contaminating source situated over or near to shaft(s) or shallow mine workings could affect the composition of these minewaters (which in any case will be acidic, contain chloride and ochre from the coal strata). The future receptor, perhaps in several decades from now may be an aquifer many kilometres away from the source. During this time whilst water levels are rising in the abandoned mineworkings, all void spaces e.g. old mine roadways, which are likely to have high concentrations of methane, will be displaced. This mine gas will undoubtedly vent at the surface via the route(s) of least resistance, with the potential to affect land at these locations.

## **2.15 Specific local features (e.g. areas of naturally metal enriched soils)**

Numerous colliery spoil tips exist in the District. Many older tips have been re shaped and do not resemble the raised mounds that they once formed. All of these older tips have been restored or development has taken place over them. Older tips are more likely to contain a higher proportion of coal which in turn will increase the risk of spontaneous combustion. More recent tips have retained their original shape and are easily identified for many years.

Historical landfills are commonplace within the District and do not always appear on old plans as former quarries. Depths of such landfills vary and for those identified to date, ash and clinker predominates with pieces of broken glass and pottery evident. Nearly all putrescible waste has usually decayed with the exception of larger pieces of timber, leather boots and similar. Monitoring for ground gas carried out at a limited number of these sites has revealed levels of carbon dioxide (above 5% by volume) which would require special precautions to be incorporated into the floor design of any new residential properties. Elevated levels of arsenic have been recorded at several locations throughout the District. One theory for this anomaly is that the origin of the arsenic is ash from domestic coal fires or from the actual coal measures in situ. Consideration should always be given to this element when carrying out development within the District, even when the DeskTop Study does not reveal any past contaminating use of the land.

Known venting of mine gas at the surface has occurred in recent years at more than one location in the District. This has occurred at or near the location of colliery shafts/drifts following their closure. Now that the last remaining colliery in the District has closed and water in the mine workings is rising, special consideration needs to be given to this problem when development is carried out at such locations.

## **2.16 Redevelopment history and controls**

The District of Ashfield was declared eligible for 100% grant assistance under the Derelict Land Act 1982. The majority of the former colliery sites in existence at this time have since been reclaimed, some using this provision. Kirkby colliery closed in the 1960's and has only been developed along the southern and eastern boundaries where access is already available. Hucknall No.1 colliery (Babbington No.7 shaft) ceased to be operational in 1986. Limited remediation has taken place allowing access roads and a number of industrial units to be constructed. Hucknall No.2 colliery closed in 1986 and is undergoing mixed use development for commercial and residential.

Opencast coal mining has taken place at several locations in the western part of the District. All of these sites have been restored, mainly to farmland or open space.

Numerous large colliery spoil tips exist within the district. These tips contain the waste shale and mudstone that was extracted in order for the coal to be worked by underground methods. The older of these tips are likely to have a higher proportion of coal particles in them. This may give rise to the risk of spontaneous combustion at some later date with consequent evolution of CO and CO<sub>2</sub> gases.

Most of these tips have now been restored and redeveloped to open space including forestry, farmland or golf courses.

Historically much quarrying has taken place throughout the eastern part of the District. Many of these quarries are shown on the Ordnance Survey County Sheets which were produced circa 1880, 1900, 1917 and 1938. The majority of these have since been filled but some remain somewhat overgrown but essentially the same as when quarrying ceased.

The control of development is undertaken in accordance with the Town and Country Planning Act 1990 and the policy base for such is the Ashfield Local Plan. This plan details the whole of the District and is reviewed in line with any reviews of the Nottinghamshire County Structure Plan.

## **2.17 Action already taken to deal with land contamination**

The following types of action have already been taken to deal with some of the land contamination in the district.

- (a) Sites dealt with during development using a Planning Condition.
- (b) Sites dealt with prior to development as part of a Reclamation Scheme.
- (c) Purpose made mine gas vents installed at some former colliery sites.
- (d) Land taken out of *housing land* designation within the Local Plan and

placed in *open space land* designation, thus changing the receptor to one where there is not significant risk of harm.

### **3. THE COUNCIL STRATEGY: OVERALL AIMS**

#### **3.1 Aims of the strategy**

The Council will aim to ensure an overall strategic approach, as specified in Paragraph B9, of the Statutory Guidance, to ensure that land identified as contaminated land is made suitable for its current use.

##### **3.1.1 Authority priorities relating to the potential problem (e.g. those affected, particular risks)**

All potentially contaminated land within the Council District has been prioritised (see Section 4). In accordance with Statutory Guidance, the Council will focus resources firstly on the investigation of those sites scoring highest under the prioritisation process.

Additionally, the Council will aim to ensure that land is made suitable for any new use by the efficient and effective interaction with the Town Planning system, in order to prevent any new contaminant source – pathway – receptor linkages and as such the creation of any new part IIA land.

Any remediation that is required will be limited to the work that is necessary to prevent unacceptable risks to human health or the environment in relation to the current use or future use of the land for which planning permission is being sought.

Where remediation is required for any new use as part of the Planning process, prior to the new use commencing, it is ADC's aim that any control shall be the role of the Town and Country Planning and Building Control Regimes (DETR Circular 02/2000 Annex 1 Paragraph 10)

#### **3.2 Objectives and milestones**

Identification (stage 1) and prioritisation (stage 2), detailed in the CLS 2001, have been completed (see Section 4). Progression with stages 3 (investigation) and 4 (remediation) will be largely dependant upon the availability of funding (discussed in Section 4) to local authorities. Recent changes to the mechanism by which the Contaminated Land Capital Projects Programme (administered by DEFRA) funding is allocated may improve access to funding towards site investigation and remediation. However, there is no certainty that any particular grant applications will be awarded, hence accurate timescales are difficult to predict.

### **3.2.1 Completion of assessment of land for which the Council may be the *Appropriate Person***

Land/property, for which the Council may be the *appropriate person*, may include.

- (a) Land/property owned/leased by the Council.
- (a) Land/property which has been polluted by the Council or its predecessors.

Such land will, in accordance with guidance, generally be dealt with in its prioritised order. However, under circumstances where both new information and funding become available, such land may be investigated before some sites identified as having a higher priority.

At the time of writing, both the Land Terrior and Property Asset Register are in the process of being digitised. Use of GIS to spatially relate these to potentially contaminated areas of land will assist in identifying the Council's contaminated land liabilities.

## **4. COUNCIL PRIORITY ACTIONS AND TIMESCALES**

### **4.1 Overview**

The CLS 2001 set out proposals for a staged approach to the identification and inspection of the District for contaminated land; the stages being identification, prioritisation, investigation and remediation. Given uncertainties over both GIS development potential and staff resources, anticipated timescales were provided for the initial stages. The revised strategy details progress to date and the methodology by which advancement will be made.

### **4.2 Progress Made Since Contaminated Land Strategy Implementation**

#### **4.2.1 Identification**

Fundamental to the identification of potentially contaminated land was aquisition of a Geographical Information System (GIS); the chosen corporate system being MapInfo.

Considerable efforts have been expended to incorporate:

- Historical Ordnance Survey maps
- Aerial photography
- Geological information
- Regulated industrial processes
- Petroleum Officer records
- Areas that have undergone previous site investigations

within the GIS to enable data capture and assist with subsequent site evaluation. Manual interrogation of the above information sources identified areas of potential contamination based on the following examples of past and current land uses:

- Railways and sidings
- Gasworks
- Factories
- Works
- Historic landfills
- Above ground storage tanks
- Electrical substations

Where such areas were identified, the boundaries of each were electronically mapped; the resulting shape being referred to as a polygon. For ease of identification, polygons were assigned different colours according to the land uses/former uses listed above. Circa 1500 potential source polygons were identified within the District.

#### **4.2.2 Prioritisation**

Legislation requires that a strategic approach be taken to ensure that potentially contaminated sites are investigated in a rational way i.e. those with the most serious and pressing problems being ranked highest. Guidance dictates that any prioritisation method must be robust, reliable, consistent, transparent and repeatable.

A review was undertaken of prioritisation methodologies seeking comments nationally, via the Contaminated Land Officer network and locally via the Nottinghamshire Contaminated Land Sub-group. Further opinion was canvassed from the Environment Agency (EA) and a leading expert in this field. No clear consensus emerged, with respondents using paper-based methods, commercially available bespoke software or a combination of the two. Many utilising software have since emphasised shortcomings, most notably the requisite time consuming manual data entry and withdrawal of software support. Expert opinion accorded with EA guidance advocating a simplified approach that can be afforded through paper-based prioritisation methods.

An in-house paper-based prioritisation model was developed in line with EA guidance. Based on source-pathway-receptor criteria, scores were allocated to each according to risk (see appendix 14 for risk-based scoring). An Excel spreadsheet was created as the tool to record all potential source polygon details and scoring deliberations in addition to permitting data manipulation, retrieval and update.

Many characteristics were considered in assigning scores, including previous site usage, potential contaminant state, pathway distances, geology, topography and receptor type. The three scores for source, pathway and

receptor were summed, the total being the prioritisation score assigned to the scenario relating to that particular polygon.

To evaluate prioritisation model efficacy, a pilot study was designed. A three square kilometre area was selected on the basis of most polygon types being present. All polygons were prioritised and resultant scores analysed for logical outcome. Following second operative cross-checking of randomly selected polygons, the model was considered to fulfill the criteria outlined above.

To facilitate the full prioritisation exercise, the District was sub-divided into the following three 4 km \* 4 km areas, encompassing:

- Kirkby in Ashfield, including Annesley
- Sutton in Ashfield, including Skegby and Stanton Hill
- Hucknall

and a fourth area consisting of:

- remainder of District

A methodical approach ensured that all potential source polygons along with associated pathways and receptors were appropriately scored, prioritised, and ranked in ascending order.

Given that circa 1500 polygons have been identified, it is inevitable that many were assigned the same scores. The derived model shares this characteristic with many of the paper-based and software models assessed in the review (discussed above), this being one of the reasons that this stage of prioritisation is considered an initial screening exercise. The first step to overcome this problem was to derive a refinement procedure which considered additional criteria, each with assigned scores, to differentiate further between those potential source polygons with the same score. Selected criteria included:

- duration of potentially contaminative use
- topography
- area of potential contamination

The highest ranking sites were subjected to this refinement procedure, producing a final set of scores which exhibit an acceptable distribution to enable precise ranking.

### **4.3 The Next Stage – Investigation**

Investigations will be in accordance with procedures set out in Section 7.

### **4.4 Timescales**

At the time of writing, there are four means by which advances may be made

to investigate sites (stage 3) and where necessary remediate (stage 4):

- under the planning regime where planning applications are spatially co-incident with prioritised potential source polygons
- using any Local Authority budget allocation for such purposes
- through site-specific funding bids to DEFRA under the Contaminated Land Capital Projects Programme (CLCPP)
- by identifying the person(s) who “caused or knowingly permitted” the contamination; generally the original polluter

As discussed in Section 3.2, there is no certainty that any specific grant application to DEFRA will be awarded. Given the uncertainties surrounding all four options outlined above, the setting of achievable, meaningful timescales for progress towards and completion of stages 3 and 4 would be arbitrary.

## **5. PROCEDURES**

### **5.1 Internal management arrangements for inspection and identification**

The management of the tasks involved in the inspection of land in order to identify *contaminated land* within Ashfield District in a strategic approach is primarily the responsibility of the Health and Housing Division, Environmental Protection Section (Land Quality Team). Appropriate delegations to officers will be made.

### **5.2 Considering local authority interests in land**

The inspection of land owned/leased by the Council will be undertaken as part of the general strategic approach. Appropriate Elected Members and Heads of Service will be informed at the earliest opportunity of any identification of *contaminated land* owned/leased by the Council or where the Council is the *appropriate person* or where it may be liable for any remediation costs.

### **5.3 Information Collection**

Formal requests for information will be sought by the Council from the following organisations:

The Environment Agency  
Department of Environment, Food and Rural Affairs  
Nottinghamshire County Council  
English Nature  
English Heritage

Other contacts which may hold general relevant information and information relating to the prevention of or actions to deal with contamination would include:

Health & Safety Executive  
Fire & Rescue Service  
Petroleum Officer

## **5.4 Information and complaints**

### **5.4.1 Procedures for dealing with information and complaints.**

Complaints and information received by the Council about land contamination matters from members of the public, businesses and voluntary organisations will be dealt with following the same procedures as currently used by the Health and Housing Division. The current procedure is as follows:

- (a) all relevant details will be suitably recorded
- (b) contact by an officer will normally be made within three working days
- (c) Complainants/informants will be informed of the progress of the investigation at suitable intervals

In addition to site location and alleged contamination details, all complainants/informants will be asked to supply their name, address and telephone number. It is a policy of the Council to treat personal details in confidence and as such this information would not normally be released. Complaints/information received anonymously will/will not be investigated depending on each individual case having first evaluated its merits.

## **5.5 Information Evaluation**

### **5.5.1 Evaluating information on actual harm or pollution.**

In order to determine that significant harm is being caused the Council will ensure that any information evaluated is suitable. This means appropriate scientific and technical assessment, of all relevant and available evidence is necessary, and on the basis of that assessment, it is satisfied on the balance of probabilities that significant harm is being caused.

Any assessment of the risks arising from a pollutant linkage will be derived from relevant, appropriate, authoritative and scientifically based guidance on risk assessment. The Council should be satisfied that the risk assessment is relevant to the circumstances of the pollutant linkage and the land in question.

It is intended that authoritative and scientifically based guideline values for concentrations of potential contaminants will be used in accordance with the Statutory Guidance, Paragraph B.48.

In order to determine that pollution of controlled waters is being caused the Council will ensure that any information evaluated is suitable. This means appropriate scientific and technical assessment, of all relevant and available evidence, and any advice provided by the Environment Agency is properly assessed and it is satisfied on the balance of probabilities that both of the

following circumstances apply;

- (a) a potential pollutant is present in, on or under the land in question, which constitutes poisonous, noxious or polluting matter, or which is solid waste matter, and
- (b) that potential pollutant is entering controlled waters by the pathway identified in the pollutant linkage.

In order to determine that pollution of controlled waters is likely to be caused, the Council will ensure that any information evaluated is suitable. This means appropriate scientific and technical assessment, of all relevant and available evidence, and any advice provided by the Environment Agency is properly assessed and it is satisfied on the balance of probabilities that the following circumstances apply;

- (a) a potential pollutant is present in, on or under the land in question, which constitutes poisonous, noxious or polluting matter, or which is solid waste matter, and
- (b) the potential pollutant in question is in such a condition that it is capable of entering controlled waters
- (c) taking into account the geology and other circumstances of the land in question, there is a pathway by which the potential pollutant can enter identified controlled waters
- (d) the potential pollutant in question is more likely than not to enter these controlled waters and, when it enters will be in a form that is poisonous, noxious or polluting, or solid waste matter and
- (e) there are no suitable risk management arrangements relevant to the pollutant linkage in place to prevent such pollution.

#### **5.5.2 Effectiveness of previous actions or other regimes in preventing or dealing with contamination**

##### **(i) Planning.**

Land contamination is a material consideration in assessing planning applications. Where development is proposed on land which may have been affected by contamination, then an appropriate planning condition would be included to ensure the land is made suitable for its intended use. Liaison and communication between planning/environmental protection/Environment Agency officers must be timely and comprehensive to ensure that any information evaluation regarding site investigation information, any remediation needed and any validation test results provided by the developers in compliance with the condition is to the satisfaction of the local planning authority.

##### **(ii) Other actions/regimes.**

Information, which may be obtained from other organisations as detailed in paragraph 5.3, will be evaluated following the procedure stated in paragraph 5.5.

### **5.5.3 Identification of any gaps in information and how these are to be remedied.**

Sources of information collected and referred to have and will continue to be checked for completeness, e.g. Historical Maps will be checked by reviewing the editions held by the Council against a list of all available Ordnance Survey plans produced. Trade Directories will also be consulted.

## **6. GENERAL LIAISON AND COMMUNICATION STRATEGIES**

Local Authorities have played a significant role in pollution control for many years and are the prime regulator for dealing with land which is affected by contamination. The "Land Quality Team" within the Environmental Protection Section of the Health and Housing Division at the Council has the function of managing the Council's obligations under the Act, examples of the Council's role include consultation, advice, inspection and enforcement. The team consists of an Environmental Protection Officer and an Environmental Protection Technician. All general enquiry's made to the Council about land contamination will normally be received by this team who will respond appropriately or in certain situations re-direct the enquiry for a response by another Section/Organisation.

### **6.1 Liaison and communication with statutory bodies.**

#### **(i) Environment Agency.**

Local Authorities and the Environment Agency have legally defined areas of responsibility relating to land contamination. However, in order for its regulation and management to be effective and efficient it is essential that both organisations work closely together. A *Memorandum of Understanding* has been agreed between the Local Government Association and the Environment Agency. Within this memorandum is the *Protocol for Land Contamination*, which details what agreements have been made. The Council will continue to exchange information relating to land contamination following the guidelines contained within this document.

#### **(ii) Other Statutory Bodies.**

The points of contact listed in paragraph 1.4.4 will be maintained in the future to enable efficient and effective communication to take place.

Archaeological issues must be taken into account throughout the process of identifying and remediating contaminated land. Where appropriate, early liaison with the Archaeological Officer at Nottinghamshire County Council should be undertaken in order to avoid unnecessary damage or harm to the historic environment.

As part of the planning process, developers/consultants will be asked to liaise direct with the land quality team on matters of land contamination. This would be encouraged by the team who would in turn keep the relevant planning

officer fully informed to ensure those planning conditions relating to contamination are satisfied or enforced as appropriate.

## **6.2 Liaison and communication with owners, occupiers and other interested parties.**

Other enquiry's, comments or disclosure of information relating to land contamination may form part of a contact made to another section of the Council. These could originate from owners, occupiers, potential house buyers, other interested parties or the wider community including educational establishments/students. An appropriate coordinated response may involve several officers/sections. On request the land quality team will provide the necessary input to enable a coordinated response. Alternatively, the details of the contact may be given to the land quality team who will then respond direct on matters of land contamination alone.

## **6.3 The wider community.**

The Council as the Enforcing Authority has a duty to maintain a public register. The Land Quality Team will hold the register. It will be accessible on request, free of charge, during office hours, Monday to Friday. Copies of register entries can be obtained after payment of a reasonable charge, (section 78 R) .

The particular details to be included in the register are prescribed in, the Contaminated Land (England) Regulations 2000, (Regulation 15 of Schedule 3)

The register will contain:

- (a) remediation notices served by the enforcing authority;
- (b) appeals against remediation notices;
- (c) remediation declarations, remediation statements under section 78H;
- (d) appeals against charging notices;
- (e) notices by the local authority effecting designation of land as a special site;
- (f) notices of the Secretary of State effecting designation as a special site;
- (g) notices terminating the designation of land as a special site;
- (h) notifications of what has been done by way of remediation by a person served with a remediation notice or who is required to publish a remediation statement;
- (i) notification given by owners or occupiers of what has been done on land by way of remediation;
- (j) convictions for prescribed offences; and
- (k) any other matters relating to contaminated land prescribed by the Secretary of State.

The Public Register will not include details of historic land use and other records used in the investigation of potentially contaminated land, because the register focuses on the enforcement history of the site. The register does

not relate to actions or information preceding the service of a remediation notice (or if the site is a special site its designation as such).

The Land Quality Team will continue to hold existing documentation regarding these information sources. Any new information gathered as part of the investigation into contaminated land will be added to any existing records in a suitable form and used to respond to any requests for information regarding specific sites.

## **7. PROGRAMME FOR INSPECTION**

### **7.1 Arrangements for carrying out detailed inspection.**

#### **7.1.1 Ensuring compliance with paragraphs B.19-25 of the statutory guidance.**

The prioritisation exercise has identified particular areas of land where it is possible that a pollutant linkage exists. Subject to the guidance in paragraphs B.22 to B.25 and B.27 to B.30 detailed in Chapter B of *Statutory Guidance on the identification of Contaminated Land*, the Council will ensure that a detailed inspection of any such area to obtain sufficient information is carried out:

- (a) to determine, in accordance with the guidance on the manner of determination in Part 4 of Chapter B of *Statutory Guidance on the identification of Contaminated Land*, whether the land appears to be contaminated land; and
- (b) to decide whether any such land falls within the definition of a special site prescribed in regulations 2 & 3 of the *Contaminated Land (England) Regulations 2006*, and is therefore required to be designated as a special site.

The Council will ensure that paragraphs B19-25 of the statutory guidance are complied with. Formal arrangements which consider the legislative requirements and any technical guidance/standards and Council policy and procedures may be necessary. Additionally, it is probable that the Council will need to utilise specialist technical advice, possibly commissioning the work of consultants to undertake works such as detailed site investigations and risk assessments.

#### **7.1.2 Site specific liaison.**

The Council will formalise the arrangements for the site-specific liaison with,

**Owners**

**Appropriate Person (see Appendix 6 Glossary of Terms and Section 1.2.4)**

**Environment Agency**

**English Nature**

**English Heritage**

In order to determine the best practicable course of action land that is owned by the Council or where the Council is the appropriate person will be an Intra-authority consideration. It may be necessary to review liaison processes within the Council to ensure that appropriate Services are made aware of the potential liability implications of the Part IIA regime. Where the Council is the “appropriate/ responsible person” it is provided in the Act that it should prepare and publish a remediation statement, indicating what it will do and within what timescale.

Liaison with other outside bodies or individuals will take place through an agreed and adopted liaison procedure. Contacts within the Environment Agency, English Nature and English Heritage will have taken place through the formal consultation stage.

### **7.1.3 Methods of inspection**

#### **(i) Collection of documentary information.**

The general arrangement for the collection of documentary information is that a consistent and reliable method should be utilised in order that inspection is carried out in an ordered and rational manner.

#### **(ii) Visit to the area and visual inspection.**

Any site visits for the purposes of visual inspection and/or limited sampling should be undertaken following any policy /procedures adopted by the Council, and in accordance with technical guidance and standards.

#### **(iii) Intrusive sampling**

Any intrusive investigations of land will require that arrangements be put in place to ensure that such investigations are undertaken in accordance with technical guidance and standards. Intrusive site investigations (and remediation works) can have a major impact upon archaeological remains. Where appropriate, early liaison with the Archaeological Officer at Nottinghamshire County Council should be undertaken in order to avoid unnecessary damage or harm to the historic environment.

### **7.1.4 Health and Safety Procedures.**

Arrangements for carrying out detailed inspection should be in compliance with health and safety legislation and the Council's own health and safety policy and procedures. Specific arrangements should be assessed and dealt with by co-ordination with the Corporate Safety Officer.

### **7.1.5 Potential *special sites*.**

The descriptions of contaminated land, which are required to be designated as special sites are set out in the Contaminated Land (England) Regulations 2006. These categories relate to certain types of substance, or to certain types of use or occupation, or to certain types of effects, such as serious water pollution. The presumption is that these types of site are likely to

present particularly difficult or serious problems. The legislation has provided that the Environment Agency will be responsible for such sites rather than the Council.

The Council will ensure that the identification of potential special sites, notification to the Environment Agency and inspection of such sites is carried out in accordance with the aforementioned Contaminated Land (England) Regulations 2006, and the Statutory guidance paragraph B.26 – B. 30.

#### **7.1.6 Arrangements for appointing external consultants etc.**

The external appointments if necessary of consultants will be in accordance with appropriate Legislation and applicable Council policy and procedures. Additionally arrangements for e.g. setting up contractual agreements, specifications, contract-tendering processes, select lists, and arrangements for evaluation and assessment of contracts, and information regarding e.g. professional, technical and financial status of consultants and subsequently considering approval criteria for consultants, should be carried out by suitably qualified personnel.

#### **7.1.7 Frequency of inspection.**

The frequency of inspection and the format of information resulting from inspection will be developed as part of an ongoing process by the Council, based upon any future Government guidance and/or targets set for overall progress. The Government has recently introduced two new Best Value Performance Indicators (BVPI's) relating to land contamination; BVPI 216a and 216b. The former is the number of sites of potential concern and the latter is the number of sites for which sufficient detailed information has been gained over the previous year to know whether remediation is required. Neither BVPI measures overall progress in respect of remediating sites and neither introduces set inspection frequencies. Appropriate inspection frequencies will be evaluated dependent upon the information derived on local circumstances. The inspection and remediation of land will be a progressive activity, which will be tackled overall on a priority risk based approach. However in circumstances where there is evidence of significant harm or significant risk of significant harm, or pollution of controlled waters, detailed investigation will progress.

#### **7.1.8 Risk communication especially with local communities.**

The Part IIA Regime requires a risk-based approach to identifying contaminated land, which may potentially affect a wide spectrum of external parties. In order that all stakeholders are kept informed the Council will ensure that an appropriate level of relevant information is communicated, which may include, Press Releases, Newsletters, Presentations, and the Website.

## 8 REVIEW MECHANISMS

There are two main aspects of review that the Council needs to take into account.

- (a) Triggers for reviewing inspection decisions.
- (b) Review of the inspection strategy.

The overall aim of the review process is to ensure that effectiveness of inspection in meeting the legal requirements is assessed.

The legislation does not prescribe the frequency at which re-inspection is to take place. However the legislation does require the Council to review its inspection strategy on a regular basis.

Consideration will be given to the periodic review of the assumptions and information used to assess potential problems. In general the available resources will influence this process, however the Council recognises that there will be circumstances when there may be an immediate trigger for the review of inspection findings outside any routine review cycle. The list below details the possible parameters, which may need to be considered.

- Proposed changes in the use of surrounding land.
- Unplanned changes in the use of land (e.g. persistent, unauthorised use of land by children.
- Unplanned events e.g. fires/ spillages and accidents, where the consequences cannot be dealt with through other environmental protection legislation.
- Reports of localised health effects, which appear to relate to a particular area of land.
- Verifiable reports of unusual or abnormal site conditions received from business, members of the public or voluntary organisations. (B.15 (d)(vii))
- Responding to information from other statutory bodies.
- Responding to information from owners or occupiers of land, and other relevant parties (B.15 (d)(vi.))

Triggers for reviewing inspection decisions may include.

- significant changes in legislation
- amendment to any adopted guideline values for exposure assessment.
- development in legal precedence and caselaw.

## **9. INFORMATION MANAGEMENT**

### **9.1 General principles.**

A large amount of information, in the form of reports, maps, letters and documents will be required to enable the Council to undertake its inspection duties. This data will come from a variety of sources and may be available in a variety of formats, including electronic records. The Council will have regard to any relevant legislation to ensure effective management and manipulation of data.

### **9.2 Information content of Public Register**

The information content and the information management of the Public Register have been detailed previously in Section 6 of this Strategy.

### **9.3 Storage systems**

The current storage of paper-based, records e.g. maps, reports, correspondence etc, has been developed and maintained by the land quality team. The current system consists of information storage in filing cabinets and plan cabinets, which exist in the Environmental Protection Section. The files held are kept separate to the general Divisional street file system. Documents held to date have been mainly derived as a result of the environmental protection/planning consultation process. The information held is filed under site-specific details, using the Ordnance Survey 1 km reference e.g. SK5056.

The land quality team has files containing the results of site specific research by the land team in response to inquiries on environmental information by e.g. consultants, developers, property conveyancers and solicitors. Various plans consisting of historical ordnance survey plans, geological sheets, waste licensing plans and groundwater vulnerability maps are stored in type and date order, in plan cabinets in the Environmental Protection Section. Historical plans comprise the main editions published circa 1880, 1900, 1917 and 1938. These are known as County Sheets and although the scale is the same as modern day i.e. 1:2500, the referencing predates the national grid. The same epochs mentioned previously are also held on a scale of 6 inches to 1 mile and will be used when necessary to supplement the larger scale plans. Historical plans circa 1960, again at a scale 1:2500, have been obtained and are referenced to the national grid.

Much of the above is also held within the GIS.

A library of certain reference documentation, which includes e.g. The DOE Industry Profiles; the Contaminated Land Research Reports Series, which are held in paper format within the filing system is also available. Additionally the land quality team has paper based copies of downloaded technical reports and guidance.

Electronic data will be held within the GIS and appropriate spreadsheets, databases and computer folders.

#### **9.4 Access to information and confidentiality of information.**

Transparency is one of the underlying principles of the new Part IIA regulatory regime. Any collected data is likely to be subdivided into the Public Register Information and wider Inspection Information. The confidentiality and accessibility of Public Register information is discussed in Section 17 of Annex 2 of the circular on contaminated land.

Detailed information or reports on sites produced for the purposes of Part IIA will generally be a matter which comes within the scope of the Environmental Information Regulations, 1992. The regulations outline those circumstances where information may be classed as confidential as being: -

- International Relations, National Defence, Public security
- Legal Proceedings
- Confidential deliberations, internal communications
- Unfinished documents
- Commercial confidentiality

Those circumstances where requested information must be treated as confidential are given as: -

- Statutory restrictions
- Personal information
- Volunteered information

Where information is provided to the Council by third parties, the status of the information should be confirmed. The third party should provide justification where they consider it should remain confidential or subject to national security considerations. The Council, prior to the release of such information to other parties, should carry out confidentiality checks.

#### **9.5 Dealing with requests for information.**

As a consequence of the Council carrying out its duties under Part IIA, environmental information will be collected that is not released through the public register, as discussed above. Requests for this information may arise from e.g. landowners, developers, consultants and members of the public. The arrangement for fees incurred are agreed prior to any site-specific work taking place. The information will be made available unless there are "compelling and substantive reasons to withhold it", the Environmental Information Regulations, 1992 list these conditions.

Responses to requests for information will be dealt within the time period of two months as defined in the regulations. Responses will take the form of either the information requested or, a refusal with the reasons for refusal

detailed.

The regulations enable the Council to make reasonable charges for the supply of information, which is on the register. This charge will reflect the resource costs; staff time spent searching, retrieving, reviewing, processing and preparing the information plus any other fixed costs such as royalty charges and postage.

#### **9.6 Provision of information to the Environment Agency.**

The Environment Agency is required to prepare and publish a report on the state of contaminated land from time to time, as required under Section 78U. To enable them to do this, the Council is required to provide appropriate information, in response to written requests from the Environment Agency. Relevant information within the scope and format required, under the Part IIA Regime, would include information the Council may have or may reasonably be expected to obtain, with respect to the condition of contaminated land in it's area.

### **10. Radioactively Contaminated Land**

The Part IIA contaminated land regulatory regime has been extended to include radioactively contaminated land (RCL). Local Authorities have a new duty to inspect land where there are reasonable grounds for believing that it is contaminated due to the presence of radioactively contaminated materials to such an extent that harm is being caused to human beings. Reasonable grounds are:

"Where an authority is aware of relevant information relating to:

- a) A former historical land use, past practice, past work activity or radiological emergency, capable of causing lasting exposure giving rise to radiation doses.
- b) Levels of contamination present on the land arising from a past work practice, past work activity or radiological emergency, capable of causing lasting exposure giving rise to radiation doses.
- c) In the case of land falling within a Nuclear Licensed Site, a statement from the NII that in its opinion may be contaminated land but cannot be dealt with under the Nuclear Installation Act."

Two Statutory Instruments relating to RCL include:

- The Contaminated Land (England) Regulations 2006
- The Radioactively Contaminated Land (Modification of Enactments)(England) Regulations 2006

Both of the above Regulations come into force 4<sup>th</sup> August 2006.

Where there is a reasonable possiblility that an identified site may be affected

by radioactive material, the Council can request that the Environment Agency undertakes the investigation. Should the Council determine any land as RCL, the Environment Agency are responsible for ensuring appropriate remediation is carried out.

## **Bibliography**

***Contaminated Land: The New Regime*, Part IIA of the Environmental Protection Act 1990, S Tromans and R Turrall-Clarke London Sweet & Maxwell 2000.**

***The Management of Contaminated Land: Croner's Environmental Management***

***The Environmental Protection Act 1990: PartIIA Contaminated Land: DETR Circular 02/2006***

***Contaminated Land Inspection Strategies, Technical Advice for Local Authorities*, DETR (Draft for comments April 2000)**

***The Environment Act 1995***

**CD-ROM: *Environment Agency Data for the Midlands Region*, October 2000**

The data provided was in ArcView GIS, Access and Excel formats, detailing e.g. Discharge point data, GQA, Abstractions, and Waste Management Licensed Sites.

***Department of the Environment Industry Profiles*, 1996**

***Environment Agency August 2000: Information Exchange with Local Authorities for the State of Contaminated Land Report***

***Nottinghamshire AGENDA 21: A plan for a better quality of life, Nottinghamshire Agenda 21 Forum*, December 2000**

The document aims to provide a picture of the future Nottinghamshire wants by piecing together the social, economic and environmental challenges facing the public, private and voluntary sectors

***The Ashfield Partnership Working Together Community Strategy for Ashfield 2001-2006: A sustainable Strategy for the Regeneration of Ashfield's Communities***

A formal Sustainable Community Strategy for Ashfield. The Ashfield Partnership Community Strategy sets out the vision for the future of Ashfield and the priorities and targets necessary to achieve that vision.

***Ashfield Local Plan Review Second Deposit May 2000 (Revised Proposals Map, Plans and Diagrams)***

The second deposit local plan has been prepared to include proposed changes to the deposit draft plan and has been issued for public consultation. The document comprises revisions to the local plan proposals map, site brief plans and other diagrams.

***A Better Quality of Life: A Strategy for Sustainable Development for the UK***

Places emphasis on the social and economic aspects of Sustainable Development as well as on the environment and the need to reduce the use of natural resources.

***Planning for the Communities of the Future: Government White Paper, 1998***

This white paper emphasises the need to regenerate our towns and cities whilst at the same time safeguarding the greenbelt areas and wider countryside by re-using previously developed land as far as possible. The Government is determined to limit the unnecessary development of greenfield areas and has set a target for 60% of new housing to be built on previously developed land (brownfield sites) by 2016.